

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE
2012 LEGISLATIVE SUMMARY

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WASHINGTON DEPARTMENT OF FISH AND WILDLIFE
2012 LEGISLATIVE PROPOSALS

2012 Agency-Request Legislation

I. Enforcement Omnibus

SSB 5201 (Hargrove) & HB 1282 (Blake). Legislation modified from the 2011 legislative session. Certain enforcement sections of the 2011 legislation will be included with a narrow title.

Statement of Need:

The agency requires new statutes and amendments to existing statutes in the Fish and Wildlife Enforcement Code, chapter 77.15 RCW, to reflect changes in legislative and agency policies and to address issues not previously codified.

Summary of Major Provisions and Impact on Existing Laws:

1. Amends RCW 77.15.410 to allow the Washington Department of Fish and Wildlife (WDFW) to suspend the hunting privileges of anyone convicted of killing or possessing big game without the proper license or tag.
2. Amends RCW 77.15.470 to require a hunter, within 24 hours of killing a big game animal, to return to the kill site if requested by a Fish and Wildlife Officer (FWO).
3. Amends RCW 77.15.100 so that if FWOs have probable cause to believe a person violated Title 77 RCW or a rule of the commission or director, and the violation involved fish, shellfish, or wildlife, such fish, shellfish, or wildlife will be forfeited to the state upon case adjudication or a refusal to file charges.
4. Amends RCW 77.15.030 to exempt fish, big game, and protected and endangered fish or wildlife unlawfully trafficked under RCW 77.15.260 from being charged as a separate offense for each fish or animal unlawfully taken or possessed.
5. Amends RCW 77.15.260 to allow unlawful trafficking transactions to be aggregated in one count if those transactions are part of a common scheme or plan.
6. Amends RCW 77.15.740 to make it illegal to: (1) approach within 200 yards of a southern resident orca whale (SROW); (2) position a vessel in the path of a SROW within 400 yards of the whale; (3) fail to disengage the transmission of a vessel within 200 yards of a SROW; or (4) feed a SROW. Exempts federal, state, tribal, or local government vessels engaged in official duties; vessels operating in conjunction with a vessel traffic service; persons engaged in an activity pursuant to a permit from the National Marine Fisheries Service and WDFW; treaty Indian or commercial fishers lawfully and actively setting, retrieving, or closely tending fishing gear; and anyone conducting vessel operations necessary to avoid imminent and serious threat to a person, vessel, or the environment. Makes it a natural resource infraction under chapter 7.84 RCW to violate this section.
7. Creates a new section in chapter 77.15 RCW to make it a crime for any person holding a game fish guide, food fish guide, hunting guide, outfitter, or charter fishing license to: (1) fail to perform any duty of a hunting guide, outfitter, or charter boat or guide operator in RCW 77.32.430; or (2) violate any rule of the commission or director regarding the sale, transfer, possession, issuance, or reporting of hunting licenses, hunting tags, temporary fishing licenses, short-term charter stamps, or catch record cards.

8. Amends RCW 77.15.700 to allow WDFW to impose license revocations and privilege suspensions when a person is convicted of a crime that requires suspension, fails to appear at a hearing to contest an infraction or criminal citation, or receives a fine or a finding of committed as a final disposition on an infraction. Also imposes a 1-year suspension on anyone convicted twice within five years of a gross misdemeanor or felony involving the sanitary control of shellfish under chapter 69.30 RCW. Prohibits a commercial fishery license revoked under this section from being used by an alternate operator or transferred during the period of suspension.
9. Amends RCW 77.15.370 to correct the CFR reference. Also indicates that it is prima facie evidence of Unlawful Recreational Fishing in the First Degree if a person possesses salmon or steelhead listed as protected or endangered under the CFR and having its adipose fin intact, if the salmon or steelhead was taken from a stream, creek, or river closed by department rule, and the stream, creek, or river is included in NOAA's critical habitat designation for a salmon or steelhead population listed in the CFR.
10. Amends RCW 77.15.730 to allow WDFW to suspend violators pursuant to the Interstate Wildlife Violator Compact for commercial violations as well as recreational violations.
11. Amends RCW 77.15.050 to clarify that "conviction" means a final conviction in a state or municipal court. Removes unvacated forfeitures of bail from the definition because, as of July 1, 2012, courts will not allow bail forfeitures on fish and wildlife crimes.
12. Adds a new section to chapter 77.15. RCW to require courts to order the mandatory appearance of violators for all criminal violations of Title 77 RCW and rules of the commission or director, and to prohibit bail forfeitures as final dispositions on crimes under Title 77 RCW and rules of the commission or director. Indicates that this act shall apply to crimes committed on or after July 1, 2012.
13. Amends RCW 77.15.690 to allow WDFW to impose license revocations and privilege suspensions when a person is convicted of a crime that requires suspension, fails to appear at a hearing to contest an infraction or criminal citation, or receives a fine or a finding of committed as a final disposition on an infraction.
14. Amends RCW 77.15.460 to make it a crime to possess a loaded firearm in or on a motor vehicle or to unlawfully use a loaded firearm from within a motor vehicle or from or on a nonhighway vehicle as defined in RCW 46.09.310.
15. Amends RCW 77.15.240 to add moose, caribou, mountain sheep, and protected or endangered animals to the list of species dogs cannot pursue, harass, attack, or kill at any time; and wild animals not classified as big game to the list that dogs cannot pursue, harass, attack, or kill during a closed season. To remove the need for the director to file emergency rules every year, allows FWOs and ex officio FWOs to take into custody or destroy dogs that are pursuing, harassing, attacking, or killing deer, elk, moose, caribou, mountain sheep, or animals classified as protected or endangered. Continues to protect FWOs and ex officio FWOs from criminal and civil liability arising from their actions under this section.
16. Repeals RCW 77.12.315, Dogs harassing deer and elk—Declaration of emergency—Taking dogs into custody or destroying—Immunity, because this is now proposed as part of Sec. 15.
17. Amends RCW 77.15.630 to make a person guilty of Unlawful Use of Fish Buying and Dealing Licenses if he/she acts in the capacity of or holds a fish dealer's license, anadromous game fish buyer's license, or fish buyer's license and commits one or more violations described in the statute.
18. Amends RCW 77.15.650 to make it prima facie evidence of a violation if a person buys or possesses a Washington resident license when he or she possesses a resident license from another state or foreign country.
19. Creates a new statute in chapter 77.15 RCW to require taxidermists, fur dealers, and meat cutters who process, hold, or store wildlife for valuable consideration to abide by any new record-keeping

and reporting requirements the department establishes by rule. Changes the record-keeping requirement for these professionals so that a unique license number issued by WDFW suffices in lieu of the name, address, and phone number of the person or company delivering the wildlife or wildlife parts.

20. Amends RCW 77.15.110 to define the activities of fur dealers and wildlife meat cutters who act for commercial purposes.
21. Amends RCW 77.15.280 to remove taxidermist record-keeping requirements, since this information is included in the new statute created under Sec. 20. Also removes catch-record-card submission requirements, since failure to abide by such requirements is punished as an infraction under RCW 77.15.160.
22. Amends RCW 77.08.010 to provide definitions for “fur dealer,” “natural person,” “taxidermist,” and “wildlife meat cutter.” Also includes definitions relating to shark finning, since these definitions were included in a newer version of RCW 77.08.010 effective on July 22, 2011.
23. Creates a new statute in chapter 77.08 RCW to define “resident” in a manner that is clear and allows Washington residents to purchase resident licenses as long as they can prove residency and do not have resident licenses for another state or country. Also, allows active-duty military personnel to purchase resident licenses if they are permanently stationed in Washington State, temporarily stationed on pre-deployment orders, or designate Washington State on their military “State of Legal Residence Certificate” and do not have a resident license in another state or country.
24. Amends RCW 77.15.720 so that “shoots” includes a firearm, bow, or crossbow. Also reflects agency policy by allowing a 3-year license revocation/privilege suspension for a person who shoots in a manner that is likely to injure or kill, or does injure or kill, another person or domestic livestock, and a 10-year license revocation/privilege suspension if the shooting kills or results in the death of another person. Provides suspension-appeal language that is more succinct and identical to language in other WDFW statutes.
25. Is modeled on RCW 77.15.420 and amends RCW 77.15.130 to impose a criminal wildlife penalty of \$2,000 for hunting, possessing, or maliciously killing ferruginous hawk, common loon, bald eagle, and peregrine falcon, and the violation results in the death of the protected wildlife. Makes the CWP joint and separate if two or more persons are convicted. Suspends a person’s privileges to which the violation applied until the CWP is paid. Allows doubling of the CWP in certain instances.
26. Amends RCW 77.15.075 to define the minimum qualifications for FWOs, including successful completion of psychological and polygraph exams administered in accordance with RCW 43.101.095(2).
27. Is modeled on RCW 46.20.017 and amends RCW 77.15.080 to require a person who is age 16 years and above and is hunting, fishing, or engaging in any activity regulated by the department to have his/her driver’s license or other photo identification (ID) in his/her immediate possession when engaging in the activity and to show the driver’s license or other ID upon the demand of any FWO or ex officio FWO for purposes of confirming that any hunting, fishing, or other department-issued license the person possesses belongs to that person.
28. Amends RCW 77.15.092 to allow FWOs and ex officio FWOs to arrest a person without a warrant if the officers have probable cause to believe the person is violating a law under Title 77 RCW or rules adopted pursuant thereto. Creates an exception to the misdemeanor presence rule under RCW 10.31.100.
29. Amends RCW 77.15.750 to allow WDFW to refuse to issue a permit, prohibit a person’s participation under a permit, or revoke a permit, and suspend the person’s ability to be issued a permit or participate under a permit for two years, if the person violates any terms or conditions of a permit; violates any rule of the commission or director applicable to a permit; or is found, by FWOs with probable cause, to have violated Title 77 RCW or a rule of the commission or director within 5 years

of applying for, or after being issued or included as a participant on, a permit covered under subsection (1) of the section. This will allow WDFW to keep known poachers from being used as hunters on kill permits and depredation permits.

30. Inserts a standard savings clause.

II. Carnivore Management & Conflict Response

Statement of Need:

As the state's human population continues to grow, interactions between wildlife and humans are more frequent, often resulting in damage to property and livestock. This issue is even more pronounced with large carnivores such as cougars, wolves, and bears and their interactions with people. The concerns extend beyond property damage to concerns for personal safety. The legislature directed the Department of Fish and Wildlife to address these growing issues through significant amendments to Chapter 77.36 RCW. Dedicated staff to deal with these management challenges proactively through education and outreach; monitoring carnivore locations, movements, and survival; and responding to incidents quickly and efficiently, is the key to successful outcomes and healthy, sustainable carnivore populations. Ongoing funding is requested for a program to address management priorities, livestock losses, and public safety concerns related to carnivores in key areas of the state. Funding necessary to support this program would be generated by developing cougar and wolf background license plates to generate revenue of approximately \$400,000 per year.

Summary of Major Provisions and Impact on Existing Laws:

- Modifies existing RCW chapter 77.36 to allow payment to landowners for livestock losses.
- Creates a statute under 77.15 to make it illegal to feed dangerous wildlife;
- Modifies 77.15.420 criminal assessment to add cougars to section (1)(a) thereby doubling the penalty from \$2,000 to \$4,000;
- Modifies 77.15.420 to add wolves to section (1)(d) thereby instituting a penalty of \$12,000;
- Modifies 43.18.200 to add a cougar background plate and a wolf plate to fund outreach and education, monitoring, and to reimburse livestock owners for losses under an independent account.

2011 Agency-Request Legislation

III. HPA/FPA Integration & Fees

SSB 5862 (Hargrove) & HB 2008 (Dunshee). Legislation carried over from the 2011 legislative session.

Potential Legislative Sponsor

IV. Cougar Hunting with Dogs

SSB 5356 (Morton) SHB 1124 (Blake). Legislation carried over from the 2011 legislative session. Certain sections of the SSB 5356 may be repackaged into a new bill with input from cougar stakeholder forum.

The Department will work with legislators and stakeholders as they develop a package of statute modifications (77.15.245; 77.12) that could reinstate the use of dogs to hunt cougars under appropriate conditions.

V. Wholesale Fish Dealer Licenses

Potential Legislative Sponsor: McCune

This proposal would amend existing statutes in chapter 77.65 RCW and 77.15 RCW, add enforceability of existing law, and streamline the fish buying and selling license and activity requirements.

1. Amends RCW 77.65.110 so it aligns with RCW 77.65.120 and agency policy and does not require charter-boat alternate operators to have a license and be designated on the license.
2. Amends RCW 77.65.130 so it aligns with RCW 77.65.120 and agency policy and does not require charter-boat alternate operators to have a license and be designated on the license.
3. Amends RCW 77.65.280. There is no distinction between a resident wholesale fish dealers license and a non-resident. Consequently, the same fee is paid regardless of residency. This is inconsistent with all other licenses WDFW issues, and impedes any ability to increase accountability through a higher bond requirement for fish dealing businesses that are difficult or impossible to inspect due to non-resident status. This piece connects with recommended amendments suggested for RCW 77.15.565 below.
4. Amends RCW 77.65.310. The documentation of commercial harvest is the responsibility of the wholesale fish dealer. The official documents meant to facilitate catch accounting are highly regulated and known as fish receiving tickets. By statute, only fish dealers or their designees are allowed to receive the forms. However, the term "designee" is not defined, and could include the transfer of these important and highly regulated forms to someone other than a licensed buyer. With the advent of the electronic fish receiving ticket, control over use of any such system is also critical to ensure accountability, and the statute should be updated to regulate paperless strategies.
5. Amends RCW 77.65.320. Wholesale fish dealers licenses are required for a number of activities (a) when a dealer is the original receiver or buyer of fish (b) for fishermen that sell catch to someone other than a wholesale fish dealer (c) for fish brokers (d) and processors. Wholesale fish dealers must procure a performance bond in order to accept fish. The bond is conditioned upon the compliance with payment of fines for violations of rules for the accounting of commercial harvest of food fish or shellfish. Processors of fish, for example, may not be original receivers, and thus the bond requirement has no relevancy since they are not responsible for catch accounting. The proposal is to separate those activities where the bond tool is important, and for those where it is not important, eliminate it.
6. Amends RCW 77.65.510 and 77.65.515. Rules governing the regulation of fishermen selling their own catch are unnecessarily complex. There are two ways in which a commercial fisherman desiring to sell his catch to the consumer can do so, without having to deliver the fish to a licensed wholesale fish dealer first. He can become licensed as a wholesale fish dealer himself, or he secure a Direct

Retail Endorsement (DRE). There are many differences between the two licenses for those desiring to sell their own catch to the consumer, to include (a) DRE's are limited to the sale of certain species, (b) catch and sale reporting obligations differ between the two licenses (c) bond requirements differ (d) and license suspension procedures are inconsistent between the two. There are apparently some advantages to the DRE with respect to Department of Health requirements not be afforded a wholesale fish dealer. Other advantages remain unclear. Only Washington license holders may possess a DRE (excluding holders from other states) to sell under this license. There was legislative interest during the last session to allow license holders from other states to procure the DRE. While not entirely clear, the advantage in doing this appeared to be associated with more liberal DOH rules afforded DRE's versus wholesale fish dealers. It is proposed that the DRE and Wholesale fish dealing requirements be streamlined or even combined. Enough convolution exists that some fishermen are purchasing both licenses to sell their own catch.

7. Amends RCW 77.65.520. Those DRE's out of compliance with associated rules are subject to different penalty systems than wholesale fish dealers. Amendments in this area are suggested to bring consistency.
8. Amends RCW 77.15.565. Criminal and civil penalties exist for violation of catch accounting rules. The civil piece should be reviewed to determine if the low fine amounts provide for adequate deterrence. Criminal and Civil penalties (and not just the fine collection) should be directly tied to the performance bond requirement with bond revocation options available for egregious catch accounting offenses.

VI. WDFW Seat on WSCC

Potential Legislative Sponsor: Swecker

Resulting from a constituent issue, Senator Swecker may have interest in sponsoring legislation that would make WDFW as a full formal member of the Washington State Conservation Commission.

VII. Invasive Species

Potential Legislative Sponsors: Blake, Hatfield

Resulting from a constituent issue, Representative Blake and Senator Hatfield may have interest in sponsoring legislation that would make Washington's aquatic invasive species fee assessed during vessel registration apply to all vessels (consistent with Oregon law).

Emerging Legislative Issues

VIII. Science Peer Review

During the 2011 session, the Legislature considered SHB 1307 (Short) that required certain natural resource agencies to demonstrate the use of peer-reviewed science prior to, or simultaneously with, taking a significant agency action. Agencies would have had to also demonstrate the use of peer-reviewed science through the maintenance of a public record that identified the scientific literature and other sources relied upon.

Concurrently, WDFW agency-request legislation, SSB 5201, was amended with a similar theme (Dunshee) that would require an appointed committee to collectively manage a biological science review process that would have the capability of reviewing any draft or final decisions of the WDFW or the Commission. The results of the peer review would then be reported to the Legislature and made available for public.

Although SHB 1307 and SSB 5201 were not enacted, there is still legislative interest to bring this issue up during the 2012 session. During the interim, it is anticipated that the House Environment Committee will hold a work session to discuss science peer review for natural resource agencies.

IX. Natural Resource Consolidation

During the 2011 session, the Legislature considered E2SSB 5669 (Ranker) that directed natural resource agencies to consolidate administrative regions, services, and functions. Although E2SSB 5669 was not enacted, the 2011-2013 Operative Budget including reductions that were associated with anticipated administrative consolidation and collocation activities. The Senate Natural Resources & Marine Waters Committee will be monitoring relevant budget implementation activities during the interim.

X. Discover Pass Implementation

Over the interim, the Senate Natural Resources & Marine Waters Committee will closely tracking and monitoring the implementation of 2SSB 5622 and the revenue from the sale of Discover Pass and day-use permits.